



September 29, 2020

Lori Guernon  
Avid Marketing Group  
100 Corporate Place, Suite 200  
Rocky Hill, CT 06067  
on behalf of Flying Embers  
**VIA E-MAIL**

**RE: Flying Embers Flying Into Fall TTW National Sweeps**

Dear Ms. Guernon:

ISSUE: This correspondence is in response to your e-mail of September 23, 2020, in which you request legal review of a sweepstakes promotion to be conducted in Pennsylvania.

According to the official rules you provided, the “Flying Embers Flying Into Fall TTW National Sweeps” promotion is scheduled to begin on October 1, 2020, and runs until December 31, 2020. To participate in the sweepstakes, interested individuals may enter by text message or by mail, as further detailed in the official rules.<sup>1</sup>

Eight grand prize winners will be randomly selected to each receive a fire pit. The total approximate retail value of the prizes is \$2,840.00. No purchase is necessary to enter the sweepstakes, and the sweepstakes is open only to residents who are at least twenty-one years of age at the time of entry. The official rules indicate that alcohol is not included in the prizes.

OPINION: Section 5.32(h) of the Pennsylvania Liquor Control Board’s (“PLCB”) Regulations states that a manufacturer, manufacturer’s representatives, or licensee may sponsor sweepstakes promotions subject to the following conditions:

- i. No purchase is necessary to enter.

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<sup>1</sup> The official rules have been attached to this Advisory Opinion for your convenience.

- ii. Entrants shall be twenty-one years of age or older.
- iii. Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- iv. Alcoholic beverages may not be part of the prize.

40 Pa. Code § 5.32(h).

This office has reviewed the proposed sweepstakes promotion and determined that it comports with applicable liquor laws and regulations, specifically section 5.32(h) of the PLCB's Regulations, 40 Pa. Code § 5.32(h).

Please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and retail licensed premises POS material is no longer required. However, the requirement for prior approval of POS material intended for use in the PLCB's Fine Wine & Good Spirits stores from the Bureau of Product Selection remains. The total cost of all POS advertising material relating to any one brand of any one manufacturer at any one time may not exceed \$300.00 on a retail licensed premises. 47 P.S. § 4-493(20)(i).

Therefore, it is permissible to conduct this promotion in the Commonwealth in reference to the areas checked below:

- retail licensed premises.
- distributor licensed premises.
- both retail and distributor licensed premises.
- The PLCB's Fine Wine & Good Spirits stores, subject to approval of the Bureau of Product Selection (POS only).
- other – Internet, text messaging.

**THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED**

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ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

RODRIGO J. DIAZ  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 20-237

**FLYING EMBERS  
FLYING INTO FALL TTW NATIONAL SWEEPS - FINAL**

**OPEN ONLY TO ELIGIBLE LEGAL UNITED STATES RESIDENTS OF ALL WHERE LEGAL EXCEPT TEXAS WHO ARE AT LEAST 21 YEARS OLD AT THE TIME OF PARTICIPATION. VOID WHERE PROHIBITED OR RESTRICTED BY LAW. VALID WHILE SUPPLIES LAST. NO PURCHASE NECESSARY. PURCHASES WILL NOT INCREASE CHANCE OF WINNING. NO ALCOHOLIC BEVERAGES ARE INCLUDED IN ANY PRIZE.** This Sweepstakes is sponsored by Flying Embers, 6067 Olivas Park Drive, Suite A, Ventura, CA 93003 (the "Sponsor").

- 1. ELIGIBILITY.** Sweepstakes participation is open only to legal residents of states where legal except Texas (void where prohibited or restricted by law), who are 21 years of age or older at the time of entry. The Flying Embers Flying into Fall TTW National ("Sweepstakes") begins 12:00AM Eastern Time ("EST") on October 1, 2020 and ends 11:59:59PM EST on December 31, 2020 ("Entry Period"). Electronic entries must be received by 11:59:59PM EST on December 31, 2020. All mail-in entries must be postmarked by December 23, 2020 and received by December 30, 2020. Electronic entries and mail-in entries may sometimes herein collectively be referred to as an "Entry" or "Entries". All Entries become the property of Sponsor and will not be acknowledged or returned.

The following individuals are not eligible: employees, contractors, directors and officers of Sponsor and each of its respective parent, affiliates, subsidiaries and web-design, advertising and promotion agencies, fulfillment, judging or other agency involved in the administration, development, fulfillment and execution of this Sweepstakes (collectively, "Parties"), and the immediate family members (parent, spouse, sibling, child, and their respective spouses or "step" of each, all lineal descendants, including those by adoption, regardless of where they reside) and those living in their same households whether or not related. Licensed distributors or retailers of alcoholic beverages, and their employees, are not eligible. Any individuals (including but not limited to employees, consultants, independent contractors, and interns) who, within the past six (6) months, performed services for Sponsor, agency or any organizations responsible for sponsoring, fulfilling, administering, advertising or promoting the Sweepstakes or supplying the prize, and/or their respective parent, affiliates, subsidiaries, and successor companies, and immediate family and household members of such individuals, are not eligible to enter or win. "Immediate family members" shall mean parents, stepparents, children, stepchildren, siblings, stepsiblings, or spouses. "Household members" shall mean people who share the same residence at least three months a year.

- 2. TO ENTER. VIA TEXT** Enter using your SMS-enabled mobile phone by texting "FLY" to 24272. You (sometimes referred to herein as an Entrant) will receive a reply text message(s) prompting you to provide your date of birth (DOB), state abbreviation and full email address. After your age is confirmed, state verified and email address accepted, you will be automatically entered into the Sweepstakes. Limit ONE (1) entry per person or email address for the duration of the Entry Period. Participants must have a mobile phone with text messaging and web browsing capabilities, as may be applicable, to Enter and may incur a standard text message and/or data charge from their wireless service provider for each message sent and received. Check with your wireless service provider for details on these and other applicable charges. Participants are solely responsible for any such wireless charges. Not all wireless carriers participate. Texting Entrant must be the authorized account holder of

the account from which the Entry is submitted. Entrant understands the text message sent is considered an electronic signature agreeing to the terms and to giving consent to receive automated text messages from Sponsor.

By participating in the Sweepstakes, Entrant agrees that Sponsor shall have the right to use all personal information provided to Sponsor in accordance with the privacy policy found at [www.flyingembers.com/privacy-policy](http://www.flyingembers.com/privacy-policy). At the time of Entry, Entrants might be given the opportunity to opt-in to receive further communications from Sponsor. Entrants are not required to opt-in and opting in will not improve your odds of winning. No more than four (4) messages per month, and in some months, there may be none. Entrant may text STOP to 24272 to stop receiving text messages.

ALTERNATIVE METHOD BY MAIL: Instead of entering via text message, you may enter by mail by hand printing your full name, zip code, telephone number, email address and date of birth on a plain 3" x 5" card and mail it to: **FLE2157688W Flying into Fall TTW Campaign 10/1/20 - 12/31/20**, c/o Avid Marketing Group, P.O. Box 1008, Rocky Hill, CT 06067-1008. Group and mechanically reproduced Entries, including photocopies, are not eligible. Sponsor will not be responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage due Entries.

Each Entrant may enter a maximum of one (1) time for the duration of the Entry Period regardless of method of Entry. Entrant agrees to comply with these Official Rules. The Sweepstakes and all content thereof are intended only for those who are of legal drinking age or older. Entrant should not share content with those who do not meet legal drinking age requirements. Entries become the property of Sponsor and will not be returned or acknowledged except as may be provided herein. By submitting an Entry, Entrant irrevocably grants Sponsor and its affiliates, legal representatives, assigns, agents and licensees, the unconditional and perpetual right and permission to reproduce, encode, store, copy, transmit, publish, post, broadcast, display, publicly perform, adapt, exhibit and/or otherwise use or reuse (without limitation as to when or to the number of times used), the Entry, including but not limited to, the right to use Entrant's name and picture/photo ("Likeness"), and/or statements regarding his/her participation in this Sweepstakes (with or without using the Entrant's name) in any and all media without limitation as to time or territory, and without additional compensation or approval from the Entrant or any other party. Entrant expressly waives any intellectual property rights, privacy/publicity rights or other legal or moral rights that might preclude the Sponsor's use of the Entry, and agrees not to sue or assert any claim against the Sponsor for the use of the Entry or Entrant's Likeness or statements.

- 3. GENERAL CONDITIONS.** By participating, Entrants accept and agree to be bound by these Official Rules and the decisions of Sponsor, which shall be final and binding in all respects.

Entrant agrees to indemnify and hold Sponsor, its agencies and Parties and their respective affiliates, officers, directors, agents, co-branders or other partners, and any of their employees (collectively, the "Indemnitees"), harmless from any and all claims, damages, expenses, costs (including reasonable attorneys' fees) and liabilities (including settlements), brought or asserted by any third party against any of the Indemnitees due to or arising out of the Entrant's Entry, or the Entrant's conduct in creating an Entry or otherwise in connection with this Sweepstakes, including but not limited to claims for trademark infringement, copyright infringement; violation of an individual's right of publicity or right of privacy; or defamation. Entrant further agrees to forever release and discharge Sponsor from any and all claims that any advertising subsequently produced, presented, and/or prepared by or on behalf of Sponsor infringes Entrant's rights with regard to any elements, characters or ideas contained in any Entry.

If for any reason the Sweepstakes cannot run as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failure or other causes which corrupt or affect the administration, security, fairness, integrity or proper conduct of the Sweepstakes, Sponsor reserves the right at its sole discretion, to cancel, terminate, modify and/or suspend the Sweepstakes and to disqualify any individual who tampers with the Entry process, violates these Official Rules, or acts in a disruptive manner. Any attempt by an Entrant to deliberately damage any website involved in the Sweepstakes or to undermine the legitimate operation of the Sweepstakes may be in violation of criminal and/or civil laws and should such an attempt be made, the Sponsor reserves the right to seek remedies and damages, including attorneys' fees, from any such Entrant to the fullest extent of the law, including criminal prosecution. No responsibility is assumed by Sponsor for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to or alteration of Entries or any problems or technical malfunctions of any telephone network or lines, typographical or other errors, computer online systems, servers or providers, computer equipment, software, failure of any email or electronic Entry to be received on account of technical problems or traffic congestion on the Internet or on any website or any combination thereof, including any injury or damage to participant's or any other person's computer related to, or resulting from, participation in or downloading any materials from this Sweepstakes. Sponsor is not responsible for any typographical or other error in the printing of the offer, administration of the Sweepstakes, or in the announcement of the prizes. Sponsor reserves the right, at its sole discretion, to disqualify any individual it determines to be tampering with the Entry mechanism, to be violating these Official Rules or to be acting in a disruptive manner.

Sweepstakes is subject to all applicable federal, state, and local laws and regulations.

- 4. PRIZES.** There will be EIGHT (8) grand prizes winners to be selected Nationally, excluding residents of Texas. Approximate Retail Value ("ARV") of \$355, with a total ARV \$2,840 for all prizes. Each grand prize winner will receive ONE (1) fire pit. Alcohol is not part of any prize. Winners must be 21 years of age or older.

No substitution or cash equivalent of prize is permitted except at Sponsor's sole discretion. Winner is responsible for any and all federal, state and local taxes or assessments, as well as any forms as may be required by said taxing authorities (e.g., IRS Form W-9). Any person winning over \$600.00 in prizes will receive an IRS Form 1099 Miscellaneous from Sponsor for the calendar year in which any prize is awarded. Odds of winning depend on the number of eligible Entries received.

This Sweepstakes is in no way sponsored, endorsed, administered by, or associated Visa.

- 5. WINNER SELECTION.** Potential winners will be selected in a random drawing from all eligible Entries received on or around January 7, 2021. Winners will be drawn by an independent judging organization whose decision with respect to the selection of the winners and the interpretation of these rules and regulations will be final. Winners will be notified by telephone and/or email. Winners will have 48 hours from time of initial notification to respond. If a respective winner does not respond within the 48 hours or an email notification is undeliverable after up to three (3) attempts, a new winner may be selected. If after choosing two potential winners for each prize pack and a winner has not been qualified for each prize pack, the Sponsor has the option to NOT award that prize. Winners will each be required to sign and return an Affidavit of Eligibility, Acceptance of Conditions, and Liability/Publicity Release or similar (where allowed by law) within three (3) calendar days. If potential winner

does not return fully executed paperwork within three (3) calendar days, winner may be disqualified, and an alternate winner may be selected. Personally, identifiable information received will be used only to verify eligibility and award prizes.

In the event of dispute concerning the identity of an Entrant, the Entry will be deemed submitted by the natural person who is the authorized holder of the email account. Sponsor and its agencies are not responsible for notifications that are misdirected because of email addresses that are no longer correct, or for any other reason beyond the control of the Sponsor. Return of any prize notification as "undeliverable" will result in disqualification. If for any reason any prize is not claimed or a winner is disqualified, the prize will be forfeited and an alternate winner will be selected from among all eligible Entries received during the Entry Period.

- 6. HOLD HARMLESS.** Sweepstakes is provided "as is". Winners and Entrants agree that Sponsor and the Parties shall not be responsible or liable for, and each winner and Entrant agrees to release and hold harmless Sponsor and the Parties from all losses, damages, or injuries of any kind to person, including personal injury or death, or property resulting from participating in the Sweepstakes or Sweepstakes-related activity, including, but not limited to, the acceptance/possession and/or use or misuse of any prize or any injury or damage to Entrant's or third person's property related to or resulting from any prize or any part of the Sweepstakes. By participating in the Sweepstakes, Entrants agree that Sponsor and the Parties will have no liability whatsoever for, and that Entrant shall hold Sponsor and the Parties harmless against, any liability for any claims based on publicity rights, defamation, or invasion of privacy as well as injuries, damages, or losses of any kind, whether or not foreseeable, including, without limitation, direct, indirect, incidental, consequential or punitive damages to persons or to property arising out of the prize awarded hereunder.

Without limiting the foregoing, everything regarding the Sweepstakes, including any websites used in connection therewith and any prize awarded hereunder, are provided "as is" without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement, all of which are expressly disclaimed by Sponsor and the Parties.

- 7. LIMITATIONS OF LIABILITY AND RELEASE.** No liability or responsibility is assumed by Sponsor or Parties resulting from any user's participation in or attempt to participate in the Sweepstakes or ability or inability to upload information in connection with participating in the Sweepstakes. No responsibility or liability is assumed by the Sponsor or Parties for technical problems or technical malfunction arising in connection with any of the following occurrences which may affect the operation of the Sweepstakes: hardware or software errors; faulty computer, telephone, cable, satellite, network, electronic, wireless or Internet connectivity or other online communication problems; errors or limitations of any Internet service providers, servers, hosts or providers; garbled, jumbled or faulty data transmissions; failure of any email transmissions to be sent or received; lost, late, delayed or intercepted email transmissions; inaccessibility of any website in whole or in part for any reason; traffic congestion on the Internet or any website; unauthorized human or non-human intervention of the operation of the Sweepstakes, including without limitation, unauthorized tampering, hacking, theft, virus, bugs, worms; or destruction of any aspect of the Sweepstakes, or loss, miscount, misdirection, inaccessibility or unavailability of an email account used in connection with the Sweepstakes. Sponsor and Parties are not responsible for any typographical errors in the announcement of prizes or these Official Rules, or any inaccurate or incorrect data contained on any website. Use of any website in connection with these Sweepstakes is at user's own risk. Sponsor and the Parties are not responsible for any personal injury or property damage or losses of any

kind which may be sustained to user's or any other person's computer equipment resulting from participation in the Sweepstakes, use of any website or the download of any information from any website. By participating in the Sweepstakes, the Entrant forever releases and discharges Sponsor and Parties from any and all claims, damages or liabilities arising from or relating to such Entrant's participation in the Sweepstakes. By accepting a prize in the Sweepstakes, winner agrees that the Sponsor and Parties shall not be liable for any loss or injury resulting from participation in the Sweepstakes, acceptance or use of any prize. Sponsor and Parties are not liable in the event that any portion of the Sweepstakes is cancelled due to weather, fire, strike, acts of war or terrorism, or any other condition beyond their control (a "Force Majeure Event").

**Choice of Law:** All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of Entrant, Sponsor and the Indemnitees in connection with the Sweepstakes shall be governed by, and construed in accordance with, the substantive laws of the State of California, USA. All claims, judgments and awards on behalf of Entrant will be limited to lesser of actual out-of-pocket costs incurred or two hundred fifty dollars (\$250). Attorneys' fees will not be awarded or available to Entrant, even if Entrant proves to be a prevailing party. ENTRANT ACKNOWLEDGES AND AGREES THAT HE OR SHE HEREBY WAIVES AND RELEASES ANY RIGHT TO BRING ANY DISPUTE AS A CLASS ACTION OR PARTICIPATE IN THE SAME.

- 8. RULES REQUESTS/NAMES OF WINNERS.** Full rules can be requested via mail, for a copy of the Official Rules, send a self-addressed stamped envelope to: **FLE2157688W** Flying into Fall TTW Campaign 10/1/20 - 12/31/20- Rules Request, c/o Avid Marketing Group P.O. Box 1008, Rocky Hill, CT 06067-1008 (return postage may be omitted where prohibited). Requests received after August 31, 2020, will not be honored. For a list of the winners, available after December 31, 2020, send a self-addressed stamped envelope to: **FLE2157688W** Flying into Fall TTW Campaign 10/1/20 - 12/31/20 – Winners List Request, c/o Avid Marketing Group P.O. Box 1008, Rocky Hill, CT 06067-1008 (return postage may be omitted where prohibited). Requests received after January 7, 2021, will not be honored.

**ADMINISTRATOR.** Sweepstakes administrator is Avid Marketing Group 100 Corporate Place, Suite 200, Rocky Hill, CT 06067.

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